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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

NANCY LEE MIZRAHI and OVADIA  
MIZRAHI,

Debtors.

Case No. 92-54703 MM

Chapter 7

DEAN WITTER REYNOLDS, INC.,

Plaintiff,

Adversary No. 92-5043

vs.

**MEMORANDUM DECISION**

NANCY LEE MIZRAHI and OVADIA  
MIZRAHI,

Defendants.

**INTRODUCTION**

Before the Court is the defendant's Motion for Order Determining Good Faith of Settlement. The hearing on the motion is continued to allow the parties to conduct further discovery.

**FACTS**

The plaintiff Dean Witter filed a complaint on June 9, 1992 in the San Mateo Superior Court against Nancy Mizrahi, the debtor, Ovadia Mizrahi, who is her estranged spouse and the moving party, Bank of America, Bank of the West, and Home Savings of America. The complaint alleges that Nancy Mizrahi, a former Dean Witter stockbroker, converted a total of \$172,000 from funds in her clients' Dean Witter accounts for personal use, that her spouse was unjustly enriched by her

1 misappropriation of funds, and that Bank of America, Bank of the West, and Home Savings, with  
2 which the debtor deposited the forged checks, negligently and in violation of banking regulations,  
3 collected and paid forged instruments to facilitate the debtor's misappropriation.

4 This bankruptcy was filed on July 2, 1992. The Superior Court suit was removed to the  
5 bankruptcy court. Ovadia Mizrahi filed a counterclaim against Dean Witter asserting that it failed to  
6 properly supervise the debtor. The plaintiff also filed a dischargeability action against the defendants.  
7 The claims against all of the defendants other than the debtor have been dismissed in the  
8 dischargeability action.

9 In a Settlement Conference conducted by the Honorable James Grube on March 12, 1993, all  
10 claims between Dean Witter, the debtor and Ovadia Mizrahi were settled. The Settlement  
11 Conference was continued until June 11, 1993 to address the plaintiff's claims against Bank of  
12 America, Bank of the West, and Home Savings. The Settlement Agreement, which was approved by  
13 the Court on April 21, 1993, provides that three separate parcels of property previously owned by the  
14 debtor or her spouse shall be sold and the proceeds distributed to Dean Witter, the trustee, Ovadia  
15 Mizrahi, and two other creditors. The appraised values of the three properties are not disclosed in  
16 the Settlement Agreement. The banks objecting to this motion did not object to the approval of the  
17 Settlement Agreement.

18 The Settlement Agreement also provided that the cash proceeds and another property in  
19 which the estate had an interest would be confirmed as the sole and separate property of Ovadia  
20 Mizrahi. Although the Settlement Agreement discloses the order and the amounts of the initial  
21 distributions, it also provides for the distribution of the balance of any funds pursuant to a separate  
22 written agreement that is neither attached to the Settlement Agreement nor filed with the Court.

23 Bank of America and Bank of the West, two non-settling co-defendants, object to the debtor's  
24 motion on the basis that the Settlement Agreement does not disclose the total amount of the  
25 settlement, the factors relevant to a good faith settlement are unsupported by the evidence currently  
26 before the Court, the Settlement Agreement provides more to Ovadia Mizrahi than is equitable, and  
27 the Settlement Agreement fails to provide adequate consideration to Dean Witter. The banks argue  
28 that the disclosures regarding the Settlement Agreement are deficient, and the total amount of the



1 Tech-Bilt, 38 Cal. 3d at 500, 213 Cal. Rptr. at 263.

2 Conclutory allegations and opinions regarding factors relevant to good faith are insufficient if  
3 they are not supported by the facts. Greshko v. County of Los Angeles, 194 Cal. App. 3d 822, 834,  
4 239 Cal. Rptr. 846, 893 (Cal. App. 1987). It is clear that the banks, which bear the burden of proof  
5 on the issue of good faith, do not have sufficient information to adequately address the factors  
6 enunciated in Tech-Bilt.

7 **CONCLUSION**

8 Therefore, the Court will not rule at this time but will continue the hearing to permit the  
9 parties to conduct discovery on the relevant factors and to further brief the issues.

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